

Response Under 37 CFR 1.116
Expedited Procedure
Examining Group 3700
Application No. 09/937,238
Paper Dated: July 29, 2004
In Reply to USPTO Correspondence of April 29, 2004
Attorney Docket No. 702-011472

REMARKS

The Office Action of April 29, 2004 has been reviewed and the Examiner's comments carefully considered. Claims 12-21 remain in this application.

Claims 12-21 stand rejected. Initially, the Examiner has rejected claims 12-21 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In addition, the Examiner is maintaining the prior art rejections of the various claims in view of U.S. Patent No. 4,759,472 to Strenger and U.S. Patent No. 4,964,151 to Heyden. In particular, claims 12-14 and 16-21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the Strenger patent. Further, claims 12, 13, 15, 17 and 19-21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the Heyden patent. In view of the following remarks and the enclosed Declaration Under 37 C.F.R. § 1.132, Applicant respectfully requests reconsideration of these rejections.

Independent claim 12 of the present application is directed to a package of flexible material that has been formed into an envelope and includes an access opening, which is closed by means of a seal formed by bonding together two or more contacting layers of the material in a particular area. The package can be opened by pulling apart two bonded-together layers of material in the area, and the flexible material is provided with a pull engagement portion. The pull engagement portion is positioned in a part of the package configured to envelop the packaged product. The seal extends the width of the package and is directed inwardly and downwardly toward the pull engagement portion and a bottom of the package, such that a central portion of the edge of the seal is immediately adjacent the pull engagement portion.

Independent claim 20 of the application is directed to a method for producing a package of flexible material. Two or more contacting layers of the material are bonded together in a particular area, in this manner the package can be opened by pulling apart two bonded layers of material in the area by engaging the flexible material at the location of a pull engagement portion. The pull engagement portion is positioned on the part of the package configured to envelop the packaged product. The seal extends the width of the package and is directed inwardly and downwardly toward the pull engagement portion and a bottom of the package, such that a central portion of the edge of the seal is immediately adjacent the pull engagement portion.

Independent claim 21 of the present application is directed to a method for packaging a product. The product is enveloped in a flexible material, and two or more contacting layers of the material are bonded together in a particular area in such a manner that the package can be opened by pulling apart two bonded layers of material in the area by engaging the flexible material at the location of a pull engagement portion. The pull engagement portion is positioned in the part of the package enveloping the packaged product. The seal extends the width of the package and is directed inwardly and downwardly toward the pull engagement portion and a bottom of the package, such that a central portion of the edge of the seal is immediately adjacent the pull engagement portion.

The Strenger patent is directed to a container having a pressure-rupturable seal for dispensing contents. When pressurized, a weakly-sealed area 25, having a U-shaped configuration, ruptures and allows access to the liquid in the container or packet 10 to the unsealed chamber 26 and out the mouth of the container 10. Other than the mouth, the many walls and boundaries of the container 10 have permanently sealed areas 20. The package may

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be provided with optional leg portions 28 extending from the seal area 25 and overlapped by the permanently sealed areas 20 to create a stronger seal. Such a configuration is illustrated in Fig. 2. Accordingly, it is this weakly-sealed area 25, which is directed to the base or center of the packet 10, that is pressurized open to allow liquid to be extracted through the unsealed chamber 26.

The Heyden patent is directed to a bag construction including an easy-open provision. A container or bag 10 includes a top seal 24 and bottom and side margins, and compartment 38 for containing the materials is defined by a top seal 24 and a bottom seal 26. A pocket 40 is defined on the bag and offset from the side margin 36 of the top seal. Pocket walls 42 and 44 define the pocket and are freely separable. An elongated object, such as a person's finger, may be inserted into the pocket mouth 46 in order to initiate the opening of the bag. Accordingly, by using the pocket 40 (or flaps), the seal 24 may be separated. All of the embodiments illustrated in Figs. 1-7 of the Heyden patent include this pocket.

The presently-pending Office Action has reiterated the Examiner's rejections in the previous Office Action, dated October 21, 2003, to which Applicant submitted an Amendment, dated February 20, 2004. The arguments and remarks found in the previously-submitted Amendment are incorporated herein by reference in their entirety. In addition, Applicant submits herewith a Declaration of one skilled in the art. Specifically, enclosed with this Response and incorporated herein in its entirety is the Declaration of Joost Vermuë Under 37 C.F.R. § 1.132. Mr. Vermuë is the Packaging Technology Manager at Masterfoods Veghel B.V. Mr. Vermuë's credentials are further elucidated in paragraphs 1-3 of the Declaration (hereinafter "*Vermuë Declaration*").

Applicant first wishes to address the Examiner's Section 112, first paragraph,

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rejections of claims 12-21. Specifically, the Examiner alleges that the originally-filed specification fails to provide the antecedent basis for the flexible material being provided with a “pull engagement portion.” Applicant respectfully draws the Examiner’s attention to the fact that the specification uses the terms “pull”, “pulled”, and “pulling” in numerous places throughout the specification. See, e.g., page 1, lines 11-12, 25 and 32; page 2, lines 3, 8-10 and 21; page 3, lines 9 and 33; page 4, lines 5 and 18; page 5, lines 17, 18 and 38; and page 6, line 3, in the originally-filed specification. Further, it is submitted that such terms are specifically used in connection with the engagement portion and refer to the pulling action required to separate the package via the engagement portion. Accordingly, Applicant submits that the specification and claims, as originally filed, fully comply with the written description requirement, and the amendments to the claims (in the previously-filed Amendment) to include the “pull” engagement portion limitation find ample support in the originally-filed specification and do not constitute new matter. Still further, Mr. Vermuë, as one skilled in the art, agrees that the specification and claims, as originally filed, provide adequate support for such a limitation. *Vermuë Declaration*, ¶12. Accordingly, withdrawal of the Section 112, first paragraph, rejections of claims 12-21 is respectfully requested.

With respect to the prior art rejection of claims 12-21, Applicant further disagrees with the Examiner’s rejection of these claims. Specifically with respect to the Strenger patent, it is submitted that the container 10 of the Strenger patent does not include an engagement portion positioned in the part of the package configured to envelop the packaged product, which is a limitation that is specifically set forth in each and every independent claim 12, 20 and 21 of the present application. Still further, the seal 25 of the container 10 of the Strenger patent does

not extend the width of the package, which is also specifically set forth in all of the independent claims of the present application. *Vermuë Declaration*, ¶10.

Still further, the structure of the container 10 of the Strenger patent is a wholly different structure than the container of the present invention. Specifically, the container of the Strenger patent includes permanently sealed areas 20, such that liquid may only be expelled from the package 10 through the chamber 26. Accordingly, it would be nearly impossible to grasp the package 10 of the Strenger patent in an engagement portion location on the portion of the package that is intended to envelop the product. This would be the case, since the liquid in the container would cause the package 10 to balloon and not provide an engagement portion that could be grasped by a user.

As specifically set forth in the independent claims of the present application, the engagement portion is a “pull engagement portion,” which indicates that a user must be able to grasp the side walls of the container in the area of the engagement portion and “pull” the package apart. Such an action is difficult, if not impossible, to accomplish with the container or package 10 of the Strenger patent, which specifically relies on pressure or “pushing” the container walls in order to rupture the weakly-sealed area 25, which then allows liquid in the container or package 10 to flow through the unsealed chamber 26 and out of the mouth of the container 10. Accordingly, it is the opinion of Mr. Vermuë, one skilled in the art, that the Strenger patent actually teaches away from the structure and operation of the container set forth in the claims of the present application. *Vermuë Declaration*, ¶11.

In the presently-pending Office Action, the Examiner disagrees that the seal 25 of the Strenger patent does not extend the width of the package. See page 3, paragraph 6 of the

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Office Action. In particular, the Examiner believes that the seal does not extend the width of the package since the claims of the present application do not specifically require the seal to extend the “entire” width of the package. In addition, it appears that the Examiner believes that the seal 18 of the package 10 of the Strenger patent is made of two major components, namely the permanent seal areas 20 and the weakly-sealed area 25, and that these combined seals extend the entire width of the package. Applicant notes that all of the independent claims of the present application clearly set forth that the package can be opened by pulling apart the seal, which means that the seal is the separable portion of the package. The Strenger patent specifically discusses placing the permanent seal 20 over the openable seal portions 28, which creates a permanent seal, thereby providing the only seal that can be pulled apart as portion 25, which does not extend the entire width of the package. Still further, and as contemplated by the claims, specification and drawings of the present application, the term “width” when used in these independent claims clearly indicates that the Applicant intends to cover a package where the seal extends substantially the “entire” width of the package. Again, Mr. Vermuë, as one skilled in the art, agrees with this argument and understands the term “width” to mean substantially the entire width of the package. *Vermuë Declaration*, ¶13.

Finally, and also with respect to the Strenger patent, it appears that the Examiner believes this reference discloses a “pull engagement portion,” since the walls of the package are “pulled apart at the location of the arcuate seal 25.” Mr. Vermuë, as one skilled in the art, disagrees with this contention, since the Strenger patent specifically teaches that “pressure is progressively applied to the packet from top to bottom forcing the contents in a downward direction. This, in turn, tends to cause a ballooning of the lower-most portion of the packet about

the arcuate-shaped seal, as diagrammatically indicated in Fig. 4.” Col. 5, lines 18-23 of the Strenger patent. Therefore, it is Mr. Vermuë’s opinion that there is no “pull” engagement portion in the package of the Strenger patent, instead only a pressurized or pushing-type engagement portion. The package of the Strenger patent cannot be pulled apart, since, as discussed in detail above, the package is filled with a liquid material and would not allow a user to grasp the side walls 11 of the package. *Vermuë Declaration*, ¶14.

Turning now to the Heyden patent, Applicant also submits that the claims of the present invention describe and set forth a structure that is distinguishable from the package disclosed in the Heyden patent. In particular, the engagement portion of the bag 18 of the Heyden patent specifically includes a pocket 40 defined by pocket walls 42 and 44 and having a pocket mouth 46. Therefore, a person must insert a finger or other similar object into the pocket 40 in order to open the bag 18. Therefore, it is the opinion of Mr. Vermuë, as one skilled in the art, that the Heyden patent teaches away from the present invention, as it includes this pocket.

Mr. Vermuë is not in agreement with the Examiner’s contention that the package of the Heyden patent discloses a “pull engagement portion positioned in the part of the package configured to envelop the packaged product.” It appears that the Examiner concludes this, as the pockets extend below the top seals, which define the upper limits of the part of the package configured to envelop the packaged product. However, it is Mr. Vermuë’s opinion that the Examiner is reading unnecessary limitations into the present claims, and that the Examiner is also misreading the structure and purpose of the package of the Heyden patent. The Heyden patent specifically shows a pocket 40, 66, 82, 96 and 122, that is not configured to envelop the product

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and is disposed above the top seal, which is clearly evidenced in each and every figure of the Heyden patent. Therefore, with respect to independent claims 12, 20 and 21 of the present application, these claims specifically recite that the engagement portion is positioned in the part of the package that is configured to or does indeed envelop the packaged product. *Vermuë Declaration*, ¶15.

Based upon these arguments, Mr. Vermuë concludes that the Strenger patent does not teach or suggest a container that includes a pull engagement portion positioned in the part of the package configured to envelop the packaged product, and having a seal that extends the width of the package, as specifically set forth in independent claims 12, 20 and 21 of the present application. *Vermuë Declaration*, ¶16. Mr. Vermuë further concludes that the Heyden patent does not teach or suggest a container having a pull engagement portion positioned in the part of the package configured to envelop the packaged product, as specifically set forth in independent claims 12, 20 and 21 of the present application. *Id.*, ¶17. On this basis, Mr. Vermuë concludes that none of the prior art of record anticipates or obviates any of the pending claims 12-21 in the present application. *Id.*, ¶18.

For the foregoing reasons, and as supported by the enclosed Declaration of Mr. Vermuë, claims 12, 20 and 21 are not anticipated by or rendered obvious over the Strenger patent, the Heyden patent or any of the prior art of record, whether used alone or in combination. There is no hint or suggestion in any of the references cited by the Examiner to combine these references in a manner which would render the invention, as claimed, obvious. Accordingly, reconsideration of the rejections of independent claims 12, 20 and 21 is respectfully requested.

Claims 13-19 depend either directly or indirectly from and add further limitations

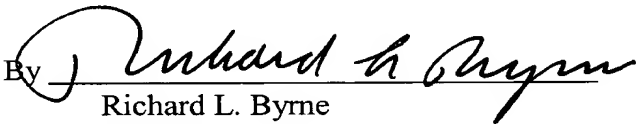
Response Under 37 CFR 1.116
Expedited Procedure
Examining Group 3700
Application No. 09/937,238
Paper Dated: July 29, 2004
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Attorney Docket No. 702-011472

to independent claim 12 and are believed to be allowable for the reasons discussed hereinabove in connection with independent claim 12. On this basis, reconsideration of the rejections of claims 13-19 is respectfully requested.

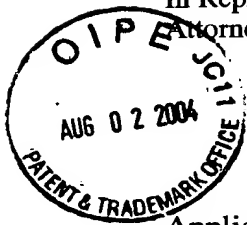
For all the foregoing reasons, Applicant believes that claims 12-21 are pentable over the cited prior art and are in condition for allowance. Reconsideration of the rejections and allowance of all pending claims 12-21 are respectfully requested.

Respectfully submitted,

WEBB ZIESENHEIM LOGSDON
ORKIN & HANSON, P.C.

By 

Richard L. Byrne
Registration No. 28,498
Attorney for Applicant
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219-1818
Telephone: 412-471-8815
Facsimile: 412-471-4094
E-mail: webb@webblaw.com



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/937,238
Confirmation No. : 6232
Applicant : **Mechteld G.M. RUTTEN**
Filed : January 29, 2002
Title : **EASY-OPEN PEEL SEAL FOR
FLEXIBLE PACKAGE**
Group Art Unit : 3727
Examiner : Jes F. Pascua
Customer No. : 28289

DECLARATION OF JOOST VERMUË UNDER 37 C.F.R. § 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Joost Vermuë, hereby declare and state as follows:

1. I am the Packaging Technology Manager at Masterfoods Veghel B.V.
2. I manage the European packaging technology team for the innovation of cross-category packaging, including snack, pet and human food packaging.
3. I have no financial interest in this invention, and I am not an inventor thereof.

4. I have reviewed the prosecution of U.S. Patent Application No. 09/937,238, filed January 29, 2002 and entitled "Easy-Open Peel Seal for Flexible Package."

I have further reviewed the patents cited by the Patent Examiner during the prosecution of this application, including U.S. Patent Nos. 4,759,472 to Strenger and 4,964,515 to Heyden, and I believe that the package of flexible material, method of producing such a package and method for packaging a product, as set forth in the claims of Application No. 09/937,238, represent novel and improved packages, production methods and packaging methods that are distinguishable

from the packages and methods of the prior art.

5. The present invention is directed to a package of flexible material, which has been formed into an envelope, and includes an access opening, which is closed by means of a seal formed by bonding together two or more contacting layers of the material in a particular area. The package can be opened by pulling apart two bonded-together layers of material in the area, and the flexible material is provided with a pull engagement portion. The pull engagement portion is positioned in a part of the package configured to envelop the packaged product. The seal extends the width of the package and is directed inwardly and downwardly toward the pull engagement portion and a bottom of the package, such that a central portion of the edge of the seal is immediately adjacent the pull engagement portion.

6. The present invention is also directed to a method for producing a package of flexible material. Two or more contacting layers of the material are bonded together in a particular area, in such a manner that the package can be opened by pulling apart two bonded layers of material in the area by engaging the flexible material at the location of a pull engagement portion. The pull engagement portion is positioned on the part of the package configured to envelop the packaged product. A seal extends the width of the package and is directed inwardly and downwardly toward the pull engagement portion and a bottom of the package, such that a central portion of the edge of the seal is immediately adjacent the pull engagement portion.

7. The present invention is further directed to a method for packaging a product. The product is enveloped with a flexible material, and two or more contacting layers of the material are bonded together in a particular area in such a manner that the package can be opened by pulling apart two bonded layers of material in the area by engaging the flexible material at the location of a pull engagement portion. The pull engagement portion is positioned in the part of the package enveloping the package product. The seal extends the width of the package and is directed inwardly and downwardly toward the pull engagement portion and a bottom of the package, such that a central portion of the edge of the seal is immediately adjacent the pull engagement portion.

8. The Strenger patent is directed to a container having a pressure-rupturable seal for dispensing contents. When pressurized, a weakly-sealed area 25, having a U-shaped configuration, ruptures and allows fluid communication of the liquid in the container or packet 10 to the unsealed chamber 26 and out of the mouth of the container 10. Other than the mouth, the other walls and boundaries of the container 10 have permanently sealed areas 20. Optionally, the package may be provided with leg portions 28 extending from the seal area 25 and overlapped by the permanently sealed areas 20 to create a stronger seal. Such configuration is illustrated in the Figure 2. Accordingly, it is this weakly sealed area 25, which is directed to the base or center of the packet 10, and that is pressurized open to allow liquid to be extracted through the unsealed chamber 26.

9. The Heyden patent is directed to a bag construction including an easy-open provision. A container or bag 10 includes a top seal 24 and bottom and side margins. A compartment 38 for containing the material is defined by a top seal 24 and a bottom seal 26. A pocket 40 is defined on the bag and offset from the side margin 36 of the top seal. Pocket walls 42 and 44 define the pocket and are freely separable. An elongated object, such as a person's finger, may be inserted into the pocket mouth 46 in order to initiate the opening of the bag. Accordingly, by using the pocket 40 (or flaps), the seal 24 may be separated. All the embodiments that are illustrated in Figs. 1-7 of the Heyden patent, which I have reviewed in full, include this pocket.

10. When comparing the Strenger patent with the present invention, it is evident that the container 10 of the Strenger patent does not include an engagement portion positioned in the part of the package configured to envelop the packaged product, which is a limitation which is specifically set forth in all of the independent claims 12, 20 and 21 of Application No. 09/937,238. In addition, the seal 25 of the container 10 of the Strenger patent does not extend the width of the package, which is also specifically set forth in all of the independent claims of the present application.

11. I also believe that the structure of the container 10 of the Strenger patent is a wholly different structure than the container of the present invention. Specifically, the

container of the Strenger patent includes permanently sealed areas 20, such that liquid may only be expelled from the package 10 through the chamber 26. Therefore, it would be very difficult to grasp the package 10 of the Strenger patent in an engagement portion located on the portion of the package that is intended to envelop the product. As specifically set forth in the independent claims of the present application, the engagement portion is a "pull engagement portion," which indicates that a user must be able to grasp the sidewalls of the container in the area of the engagement portion and "pull" the package apart. Such an action is virtually impossible to accomplish with the container of the Strenger patent, which specifically relies on pressure or "pushing" the container walls in order to rupture the weakly sealed area 25 to allow liquid in the container or packet 10 to flow through the unsealed chamber 26 and out of the mouth of the container 10. Therefore, it is my opinion that the Strenger patent actually teaches away from the structure and operation of the container of claims of Application No. 09/937,238.

12. It appears that the Examiner also believes that the specification, as originally filed, fails to provide antecedent basis for the flexible material being provided with a "pull engagement portion." In this regard, the Examiner has rejected the claims under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. I disagree with the Examiner, as the terms "pull", "pulled", and "pulling" are used in numerous places throughout the specification. In addition, these terms are specifically used in connection with the engagement portion, and refer to the pulling action required to separate the package via this engagement portion. Accordingly, I believe that one skilled in the art would agree that the specification and claims, as originally filed, provide adequate support for such a limitation.

13. On page 3, paragraph 6, of the Office Action, the Examiner disagrees that the seal 25 of the Strenger patent does not extend the width of the package. In particular, the Examiner believes that the seal 25 does extend the width of the package since the claims of the present application do not specifically require the seal to extend the "entire" width of the package. In addition, the Examiner believes that the seal 18 of the package of the Strenger patent is made of two major components, permanent seals 20 and the weakly sealed area 25, and that these combined seals extend the entire width of the package. All the independent claims

of the present application clearly set forth that the package can be opened by pulling apart the seal, which means that the seal is the separable portion of the package. The Strenger patent specifically discusses placing the permanent seal 20 over the openable seal portions 28, which creates a permanent seal, thereby providing the only seal that can be pulled apart is portion 25, which does not extend the entire width of the package. In addition, and as contemplated by the claims, specification and drawings of the present application, the term "width" when used in these independent claims clearly indicates that the applicant intends to discuss a package where the seal extends substantially the "entire" width of the package.

14. Also with respect to the Strenger patent, it appears that the Examiner believes that this reference discloses a "pull engagement portion," since the walls of the package are "pulled apart at the location of the arcuate seal 25". I disagree with this contention, since the Strenger patent specifically teaches that "pressure is progressively applied to the packet from top to bottom forcing the contents in a downward direction. This, in turn, tends to cause a ballooning of the lower-most portion of the packet about the arcuate-shaped seal, as diagrammatically indicated in Fig. 4." Col. 5, lines 18-23. Accordingly, it is my opinion that there is no "pull" engagement portion in the package of the Strenger patent, instead only a pressurized or pushing-type engagement portion. The package of the Strenger patent could not be pulled apart, since, as discussed in detail above, the package is filled with a liquid material and would not allow a user to grasp the sidewalls 11 of the package.

15. With respect to the Heyden patent, the claims of the present invention also describe and set forth a structure that is distinguishable from this reference. The engagement portion of the bag 18 of the Heyden patent specifically includes a pocket 40 defined by pocket walls 42 and 44 and having a pocket mouth 46. Therefore, a person must insert a finger or other similar object to open the bag 18 using the pocket 40. Therefore, it is my opinion that the Heyden patent also teaches away from the present invention as it includes this pocket. Accordingly, I disagree with the Examiner's contention that the package of the Heyden patent discloses a "pull engagement portion positioned in the part of the package configured to envelop the packaged product." The Examiner concludes this, as the pockets extend below the top seals,

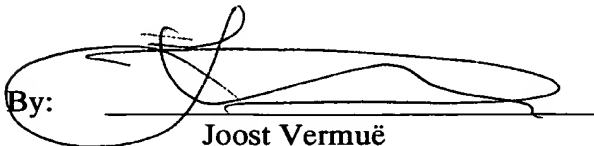
which define the upper limits of the part of the package configured to envelop the packaged product. I believe that the Examiner is reading unnecessary limitations into the present claims, and I further believe that the Examiner is misreading the structure and purpose of the package of the Heyden patent. In particular, the Heyden patent specifically shows a pocket 40, 66, 82, 96 and 122, that is not configured to envelop the product and is disposed above the top seal, which is clearly evidenced in each and every figure of the Heyden patent. All of independent claims 12, 20 and 21 specifically recite that the engagement portion is positioned in the part of the package that is configured to or does indeed envelop the packaged product.

16. I conclude that the Strenger patent does not teach or suggest a container that includes a pull engagement portion positioned in the part of the package configured to envelop the packaged product, and having a seal that extends the width of the package, as specifically set forth in independent claims 12, 20 and 21 of the present application.

17. I conclude that the Heyden patent does not teach or suggest a container having a pull engagement portion positioned in the part of the package configured to envelop the packaged product, as specifically set forth in all of independent claims 12, 20 and 21 of the present application.

18. I further conclude that none of the prior art of record anticipates or obviates any of the pending claims 12-21 in the present application based upon the foregoing arguments.

19. I declare further that all statements made herein of my own knowledge are true and that all statements made on the information and belief are believed to be true, and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable with fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or any patent issuing thereon.

By: 
Joost Vermuë

Date: 15/07/04